

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

YVONNE DANIELS, as personal
representative of the ESTATE OF
BETTIE FAINS,

Plaintiff,

v.

GREEN VALLEY SNF LLC,
Individually and d/b/a Pinnacle
Rehabilitation & Health Center, IPC
HEALTHCARE, INC., and ANGELA
BARONE, NP,

Defendants.

C.A. No. N22C-02-068 JRJ

ORDER

Submitted: May 4, 2022
Decided: May 23, 2022

**Upon Defendants IPC Healthcare, Inc. and Angela Barone, NP’s Motion to
Determine if the Affidavits of Merit Comply with Sections (a)(1) and (c) of 18
Del. C. §6853**

Section 6853(a)(1) of Title 18 of the Delaware Code provides that all health-care negligence complaints must be accompanied by “[a]n affidavit of merit as to each defendant signed by an expert witness . . . and accompanied by a current *curriculum vitae* of the witness, stating that there are reasonable grounds to believe that there has been health-care medical negligence committed by each defendant.”

In this case, two affidavits of merit were filed under seal, as required. Pursuant to 18 *Del. C.* §6853(d), Defendants IPC Healthcare, Inc. and Angela

Barone, NP, requested *in camera* review to determine compliance with sections 6853(a)(1) and (c). After reviewing the affidavits of merit and the accompanying *curricula vitae*, the Court finds:

1. Both affidavits are signed by the expert witnesses and meet the requirements set forth in 10 *Del. C.* §3927 (Unsworn Declarations Under Penalty of Perjury).¹
2. Both affidavits are accompanied by a current *curriculum vitae*.
3. Both experts set forth their opinion that there are reasonable grounds to believe that there has been health-care medical negligence by the named defendant.
4. Both experts set forth their opinion that there are reasonable grounds to believe that the applicable standard of care was breached by the named defendant and that the breach was a proximate cause of the injuries claimed in the complaint.
5. The first expert witness was licensed to practice medicine as of the date of the affidavit. The second expert witness is not licensed to practice medicine; she was a licensed Registered Nurse as of the date of the affidavit.
6. In the three years immediately preceding the alleged negligent act, both expert witnesses were engaged in the treatment of patients and/or in the

¹ See Amended Standing Order No. 8.

teaching/academic side of medicine in the same or similar field of medicine as the defendant or defendants.

7. The affidavit of the first expert witness, a medical doctor, does not indicate whether any of Defendants' employees or agents involved in Decedent's care are Board certified.² If they are, it is unclear whether the first expert witness is Board certified in the same or similar field of medicine. The second expert witness is not a physician; she is a licensed Registered Nurse.

While the affidavit of merit for the first expert witness is deficient, "[t]he statute does not . . . contemplate that affidavits that are initially incomplete are automatically subject to outright dismissal."³ The nature and scope of the deficiencies may have been the result of administrative error.⁴ The Court "must give weight to Delaware's well-known public policy that favors permitting a litigant to have his day in court."⁵

To that end, the Court will allow Plaintiff 14 days to file an affidavit of merit for the first expert witness that complies with the statutory requirements of section 6853(c) of Title 18 of the Delaware Code.

² See 18 Del. C. §6853(c) (" . . . and the expert shall be Board certified in the same or similar field of medicine if the defendant or defendants is Board certified").

³ *Farmer v. Manor Care of Wilmington, DE, LLC*, 2018 WL 3689260, at * 1 (Del. Super. Aug. 2, 2018) (citing *Dishmon v. Fucci*, 32 A.3d 338, 345 (Del. 2011)).

⁴ *Farmer*, 2018 WL 3689260, at *1 (Del. Super. Aug. 2, 2018) (citing *Janssen v. Christiana Care Health System, Inc.*, 2015 WL 105727, at *1 (Del. Super. Feb. 10, 2015) (stating that a defect in an affidavit of merit could have been a mere filing error)).

⁵ *Farmer*, 2018 WL 3689260, at *1 (Del. Super. Aug. 2, 2018) (citing *Dishmon*, 32 A.3d at 345).

**NOW, THEREFORE, this 23rd day of May, 2022, IT IS HEREBY ORDERED
THAT:**

1. The affidavit of merit for Plaintiff's first expert witness does not comply with
18 *Del. C.* §6853(c).
2. Plaintiff is granted leave to file an affidavit of merit for the first expert witness
that complies with the requirements of 18 *Del. C.* §6853(c). The compliant
affidavit of merit shall be filed within 14 days.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan. R. Jurden, President Judge

Original to Prothonotary
cc: Colleen D. Shields, Esq.
Kelley M. Huff, Esq.
Lisa M. Grubb, Esq.